Zoning Reform Meeting
November 19, 2007

We have agreed to use this meeting to explore the concept of local planning and zoning being "consistent" in some way with broader statewide and regional land use objectives.

Based on our prior discussions, and on discussions that have occurred at the on-going regional zoning meetings, the following appear to be important qualities for any promising approach to determining "consistency":

1. It should convey a simple and clear message about what our broader statewide and regional land use objectives are.
2. It should allow local communities to expect that their local planning and zoning will be determined to be "consistent" (or not) in a transparent and predictable way.
3. It should recognize that much of our most thoughtful local planning and zoning initiatives over the last several years have been on a "district" basis. Examples include district-based changes prompted by statute (such as Chapter 40R and Chapter 43D) and by local initiative (various downtown revitalization districts, transit-oriented districts and aquifer protection districts, for example).
4. It should create a standard for "consistency" that could be met by at least 10% to 20% of our local communities today, based on their existing planning and zoning, as it currently stands or with very minor modifications. The standard should be at this level to convey the message that our local communities are simply being asked to implement the kind of planning and zoning that our most innovative communities already have. Therefore, achieving "consistency" is not unrealistic, nor adverse to local interests.
5. It should fairly take into account regional and community differences within the Commonwealth.

These considerations suggest at least one possibility for determining "consistency": A community's planning and zoning would be deemed "consistent" with broader statewide and regional land use objectives if it:

A. Identified one or more appropriate areas for new growth, including housing (both multi-family and single-family housing).
B. Implemented some of what are generally regarded as planning and zoning "best practices" for new growth in such areas. Such best practices would be both substantive (reasonable densities, mix of uses, etc.) and procedural (as of right permitting within predictable time limits, single point of contact for permitting issues, etc.).
C. Identified one or more appropriate areas for conservation of land substantially in its existing condition.
D. Implemented some of what are generally regarded as planning and zoning "best practices" for conservation in such areas (such practices differ for the protection of aquifers, farmland, etc.)

Note that in both the growth and conservation areas, “best practices” may include provisions relating to good energy management and use and to good water management and use.

For certain, many issues would need to be further clarified for this approach to qualify as predictable and transparent, including further clarification of what constitutes “appropriate” areas for new growth and for conservation and how large or small they should be. Presumably at least some of this clarification would occur through the issuance of regulations. The regional planning agencies could play an important role in making these determinations, as well as in helping local communities to investigate whether there could appropriately be some inter-municipal “trading” of growth and conservation areas within any given region.

Before exploring those issues further, it may be helpful to look at this approach at achieving consistency with broader statewide and regional land use objectives in the context of a more complete planning and zoning reform proposal. Based again on our prior discussions, and on discussions that have occurred at the on-going regional zoning meetings, one more complete approach to planning and zoning reform might be described through the following four-part proposal:

(1) The Commonwealth would make a substantial commitment to providing local communities with: (a) technical assistance from state agency staff, (b) technical assistance from regional planning agencies and, where appropriate, other quasi-public agencies (such assistance to be supported by state funding), and (c) direct funding for local staff and/or outside consultants, all in support of planning and zoning efforts which may be undertaken by communities as described below. It is understood that, for many Massachusetts communities, actually undertaking the sort of planning and zoning efforts described below would be a profound change from their planning and zoning efforts to date.

(2) Using resources described above, communities may choose to make a commitment to: (a) prepare a master plan for the entire community, and (b) thereafter implement all zoning in a manner consistent with that plan. Each master plan would be certified by the Commonwealth as "complete" (that is, containing all of the statutorily required elements) and "consistent", perhaps after having been pre-certified by the relevant regional planning authority. Based on the "consistency" approach described above, the certification would be administrative and predictable. Certified master plans would be in effect for ten years, perhaps with some updating required every five years.

(3) For communities making this commitment, the following planning and zoning changes might occur:

(A) The exception for "approval not required" plans might be eliminated, except perhaps for the division of not more than two or three infill lots, so long as the community implemented a minor subdivision review process for smaller subdivisions (perhaps ten lots or fewer), in which review was limited to some basic issues such as access, drainage and zoning compliance.

(B) The zoning freeze associated with subdivisions (including minor subdivisions as described above) might be modified as follows:

(i) Some change in the timing of when the freeze becomes effective (to protect those with a good faith intention to proceed with development, but not otherwise);

(ii) A limitation that the freeze applies to the project proposed, or to a similar project, but not otherwise (again, to protect those with a good faith intention to proceed with development); and

(iii) A freeze duration closer to three years than eight years, except that if construction or other substantial expenditure has occurred within the first three years, then the freeze would continue until project completion (completion of all phases in a multi-phase master planned project). A freeze duration such as this could be modeled on the current MEPA provisions for determining when a "notice of project change" is needed.

(C) Impact fees of a reasonable, predictable and consistent amount might be authorized (perhaps within the growth areas or perhaps elsewhere to the extent development were allowed as of right).

(D) Limitations on the maximum permitted interior floor area of residential structures might be authorized.

(E) Statutory and case law limitations on the maximum permissible minimum lot size might be modified for land within the conservation areas.

(F) Statutory and case law limitations on rate-of-growth provisions might be modified for land within the growth areas (or perhaps elsewhere to the extent development were allowed as of right).

(G) The requirement of a super-majority vote (two-thirds) might be removed for zoning matters (perhaps with respect to zoning actions taken to create growth or conservation areas or the rules within those areas).

(H) Transfer of development rights provisions might be expanded to include as-of-right transfers and perhaps inter-municipal transfers.

(I) Broader and more flexible authorization might be given for "cluster" or "open space residential design" provisions (perhaps within conservation areas).

(J) The local community might lose some or all of these enhanced planning and zoning powers if it were unable to demonstrate meaningful progress in actual growth or conservation within the identified areas at various times (perhaps every three years).

(K) The local community might accept the introduction of other growth or conservation enhancements (such as density bonuses within growth areas) if it were unable to demonstrate meaningful progress in actual growth or conservation within the identified areas at various times (perhaps every three years).

(4) The following planning and zoning changes might occur in all local communities, whether or not they chose to make the commitment described above:

(A) Clear statutory authorization for site plan approval provisions.

(B) Clear statutory authorization for form-based zoning provisions.

(C) Clear statutory authorization for inclusionary zoning (perhaps in locations where residential development is allowed as of right and perhaps where accompanied by appropriate density bonuses)

(Note: The distinction as to which planning and zoning changes might be made only on a selective basis, to local communities that chose to the make the commitment described above, rests on the concern that otherwise such changes could be used by a community not committed to new growth, especially new housing growth, in a manner that further restricts new housing development in that community, contrary to broader objectives.)